Supreme Court, U.S.
FILED
98 104 JUL 14 1998
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1997

OSCAR F. SANCHEZ; LILIANA SANCHEZ,

Petitioners,

vs.

CHARLES SWYDEN, Inspector, and
WARREN K. HAYWARD, Officer, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

HERIBERTO MEDRANO
Counsel of Record
1100 West Tyler
Harlingen, Texas 78550
(956) 428-2412
(956) 428-2495 FAX

JANICE A. CASSIDY
JANICE A. CASSIDY, P.C.
P.O. Box 592
550 North Sam Houston
San Benito, TX 78586
(956) 399-3327
(956) 399-0688 FAX

Attorney for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Is it a violation of a clearly established constitutional right to detain an individual when officials know that detainee is not the person wanted on a warrant outstanding for someone other than the detainee?

Is the length of time of detainment the determinant of a due process violation where officials know that detainee is not the person wanted on a warrant outstanding for someone other than the detainee?

Is an arrest warrant facially valid if it is not for the individual actually being detained under the warrant?

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the following were parties before the Court of Appeals: Warren K. Hayward, Officer, Michael S. Lewellen, Sgt., W. H. Bearden, Officer, Barry J. McDermott, Officer, P. Pohl, Sgt., Sam Nuchia, Police Chief, Frank Jackson, Lt. Cpt., Mark V. Mancuso, Cpt., and Other Unnamed Persons employed by the City of Houston, Bill Delmore, Judy Porter, Johnny Klevenhagen, Sheriff, Andrew White, Sgt., and Other Unnamed Persons employed by Harris County, Sarah Hunter, Floyd Duncan, John P. Chandler, Sheriff, and other Unnamed Persons employed by Cheatham County, Tennessee.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE 1

STATEMENT OF THE CASE 3

A. Background of the Case 3

B. The Proceedings Below 4

REASONS FOR GRANTING THE WRIT 5

I. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THE CONCURRING OPINION OF JUSTICE BLACKMUN IN THE BAKER CASE 5

II. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW ASSUMES THAT REGARDLESS OF THE FACTS A DETENTION OF UP TO THREE DAYS CANNOT GIVE RISE TO A VIOLATION OF A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT 6

III. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW IS BASED ON ERRONEOUS FACTS CONCERNING THE VALIDITY OF THE ARREST WARRANT 8

CONCLUSION 8

APPENDIX ..... App. 1

TABLE OF AUTHORITIES

Page

CASES CITED:

Baker v. McCollan, 443 U.S. 137, 61 L.Ed. 2d 433, 99 S. Ct. 2689 (1979) 3, 5, 6

Gramenos v. Jewel Companies, Inc., 797 F.2d 432 (7th Cir. 1986) 7

Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L.Ed. 396 (1982) 5

Lewis v. O'Grady, 853 F.2d 1366 (7th Cir. 1988) 6

Moore v. Marketplace, 754 F.2d 1336 (7th Cir. 1985) 7

STATUTES CITED:

42 U.S.C. § 1983 2

28 U.S.C. § 1254(1) 1

UNITED STATES CONSTITUTION CITED:

The Fifth and Fourteenth Amendments 1

RULES CITED:

Rule 5 of the Federal Rules of Criminal Procedure 2

Texas Rules of Criminal Procedure 14.06 and 15.17 2

Supreme Court Rule 13.1 1

PETITION FOR WRIT OF CERTIORARI

Petitioners, Oscar F. Sanchez, and Liliana Sanchez, respectfully request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals, Fifth Circuit, is published at 131 Federal Reporter 3d, 1144. The opinion of the United States Court of Appeals on rehearing is not published but appears at Appendix 24.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit on rehearing was entered on April 15, 1998. Pursuant to Supreme Court Rule 13.1, this petition has been timely filed within ninety (90) days of the rehearing.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

The Fifth and Fourteenth Amendments to the United States Constitution provide in relevant part:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law . . . "

42 U.S.C. § 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . "

Rule 5 of the Federal Rules of Criminal Procedure provides that:

> "An officer making an arrest under a warrant issued upon a complaint or any person making any arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available federal magistrate judge or, in the event that a federal magistrate judge is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. 3041 . . . "

Texas Rules of Criminal Procedure 14.06 and 15.17 provide:

> "(a) In each case enumerated in this Code, the person making the arrest shall without unnecessary delay take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described in this article,

before a magistrate in a county bordering the county in which the arrest was made . . . "

STATEMENT OF THE CASE

The fundamental question is whether detaining an individual on an arrest warrant intended for someone other than the detainee when the detaining officials know he is not the wanted person gives rise to the deprivation of a clearly established constitutional right regardless of the length of the detention. The Federal Magistrate and Fifth Circuit Court of Appeals determined that Petitioner, Oscar F. Sanchez, suffered no deprivation of a clearly established constitutional right thus affording the detaining officials qualified immunity since Petitioner's detention occurred over a twenty six (26) hour period and this Court previously determined in *Baker v. McCollan*, 443 U.S. 137, 61 L.Ed. 2d 433, 99 S. Ct. 2689 that a three day detention did not amount to a constitutional deprivation.

A. Background of the Case.

Oscar F. Sanchez, a United States citizen and an employee of Southwest Airlines, was returning to the United States from Mexico at the Houston Airport at approximately 7:40 P. M. on Thursday, August 20, 1992. U.S. Customs ascertained there was a warrant outstanding for one "Oscar F. Sanchez" in Cheatham County, Tennessee and detained him for questioning. At 9:36 P.M. on the same evening Cheatham County provided via telephone and fax all identifiers on the warrant including a photograph, physical description and fingerprints.

When Petitioner had a parrot tattoo on his right shoulder and the suspect had a rose tattoo on his left shoulder, Cheatham County Sheriff Floyd Duncan testified at depositions that when he went home at 11:00 P.M. (10:00 P.M. C.S.T.) on that evening he felt the detainee was not his man. By the time that Petitioner was transferred to Houston Police Department at 12:15 A.M. on Friday, August 21, 1992, U. S. Customs Agent Cromer stated on sworn affidavit that in his opinion " . . . the detainee was not the wanted person" and that he so advised both Cheatham County and City of Houston officials. Sworn Affidavit of U.S. Customs Agent Terry M. Cromer dated January 31, 1995.

Petitioner was placed in a Houston jail with violent offenders, strip searched three (3) times, refused a telephone call and held until approximately 7:00 P.M. on Friday evening, August 21, 1992 when he was taken before a Harris County Judge and a fingerprint comparison made. He was released from custody approximately 9:30 P.M., twenty six (26) hours following his initial detention.

B. The Proceedings Below.

All Defendants filed Motions to Dismiss or Motions for Summary Judgment which were granted by the Federal Magistrate on the issue of qualified immunity. The Honorable Filemon B. Vela on review denied Defendants' Motions and all Defendants filed an interlocutory appeal to the United States Court of Appeals, Fifth Circuit. The Court of Appeals reversed and remanded. On rehearing, the Court of Appeals again reversed and remanded. The

Court determined that the facts of this case fail the first prong of the *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L.Ed. 396 test, namely, that Petitioner failed to establish a violation of a clearly established constitutional right. This Petition followed.

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THE CONCURRING OPINION OF JUSTICE BLACKMUN IN THE BAKER CASE

In *Baker, supra. at 444*, Justice Blackmun spoke to the facts of the instant case in his concurring opinion:

> "I do not understand the Court's opinion . . . to foreclose the possibility that a prisoner in respondent's predicament might prove a due process violation by a sheriff who deliberately and repeatedly refused to check the identity of a complaining prisoner against readily available mug shots and fingerprints. Such conduct would be far more 'shocking' than anything this petitioner has done."

In the instant case, the same identifiers that Defendants had in hand at 9:36 P.M. on the evening of Thursday, August 20, 1992 were utilized to release Petitioner some twenty four (24) hours later. Petitioners do not allege that Defendants erred in failing to make the comparison earlier but rather that they flagrantly disregarded his constitutionally guaranteed rights when they took no

further steps to verify his protestations of innocence all the while two of the three detaining officials knew him to be the wrong person. The conduct inflicted upon Petitioner under the facts of this case give rise to the scenario referred to by Justice Blackmun in his concurring opinion and, on that bāsis, differ from the merely negligent acts described in *Baker*.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW ASSUMES THAT REGARDLESS OF THE FACTS A DETENTION OF UP TO THREE DAYS CANNOT GIVE RISE TO A VIOLATION OF A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT

This Court needs to revisit the *Baker v. McCollan* decision in view of the nearly twenty years since its determination and the advancement of civil rights in the interim. In reliance on *Baker, supra.*, the Court of Appeals failed to consider the reasonableness of Petitioner's prolonged detention beyond receipt of the identifiers as a violation of a clearly established constitutional right, namely, the right to liberty and due process. Petitioner has no quarrel with his initial detention, the officials' attempts to identify him or any actions taken by Defendants through receipt of the identifiers. In fact, had Defendants taken Petitioner before a Judge at the start of business on Friday, August 21, 1992, this cause would not be before the Court. Is the length of detention the determinant of a constitutional violation or should the facts be analyzed in view of what the detaining officials knew during the period of detention? In *Lewis v. O'Grady*, 853

F.2d 1366 (7th Cir. 1988), the United States Court of Appeals for the Seventh Circuit reversed the lower court's granting of a directed verdict and remanded the case for a jury determination of the reasonableness of the length of time Lewis was detained after it was determined by a magistrate that he was not the person named in the arrest warrant. The Court cited its earlier opinions in *Moore v. Marketplace*, 754 F.2d 1336, 1351 (7th Cir. 1985) and *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 437 (7th Cir. 1986) holding " . . . that a detention of more than four hours, while not necessarily constitutional, requires 'an explanation'." The latter two cases involve the amount of time required to determine probable cause and the reasonableness of the length of the investigation before taking an arrestee before a magistrate. In each of the three cases, the Court determined that reasonableness was an issue for the jury. In *Gramenos, supra. at 437*, the Court held, "When the 'administrative steps' have been completed, the police must take the suspect before a magistrate to establish probable cause, or they must let him go." The Court of Appeals has taken the position that Petitioner's detention lasted only twenty six (26) hours and disregarded that the record is devoid of any reason for his detention. Petitioner concedes that the law cannot guarantee that only the guilty will be detained nor that every detaining official must act as a judge and jury on the offense alleged. But at what point does a lawful detention become a violation of a clearly established constitutional right and is that point to be determined merely by length of time?

III.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW IS BASED ON ERRONEOUS FACTS CONCERNING THE VALIDITY OF THE ARREST WARRANT

The Court of Appeals erroneously determined that Petitioner did not attack the validity of the arrest warrant and that the arrest warrant was valid. On the contrary, Petitioner alleged in his pleading and again on Appeal that the arrest warrant was not valid as to him because he was not the person wanted on the warrant. The identifiers supplied in support of the warrant described a different individual with different fingerprints, a different signature and a different photograph. Although there apparently was an outstanding warrant in Tennessee, it was not for Petitioner thus rendering the warrant on which officials relied in detaining Petitioner invalid.

CONCLUSION

This case contains an issue of fundamental importance to all of us, namely, whether we truly are guaranteed liberty and due process under the Constitution of the United States or whether those fundamental rights which our forefathers fought so hard to ensure are paid lip service in theory and disregarded in practice. The United States Constitution does not include a provision that we shall be entitled to liberty and due process but only after three (3) days and neither should the law founded upon that Constitution contain such a provision.

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

HERIBERTO MEDRANO
Counsel of Record
1100 West Tyler
Harlingen, Texas 78550
(956) 428-2412
(956) 428-2495 FAX

JANICE A. CASSIDY
JANICE A. CASSIDY, P.C.
P.O. Box 592
550 North Sam Houston
San Benito, TX 78586
(956) 399-3327
(956) 399-0688 FAX

Attorney for Petitioners

APPENDIX

Page

Opinion of the Fifth Circuit.....App. 1

Order of Trial Court denying Summary Judgment .....App. 17

Opinion of Fifth Circuit on Rehearing.....App. 24

Oscar F. SANCHEZ; Liliana Sanchez, Plaintiffs-Appellees,

v.

Charles SWYDEN, Inspector, et al., Defendants

Warren K. Hayward, Officer, et al., Defendants-Appellants.

No. 96-40557
Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

Jan. 13, 1998.

Janice A. Cassidy, San Benito, TX, for Plaintiffs-Appellees.

Andrea Chan, Office of the City Attorney for the City of Houston, Houston, TX, for Defendants-Appellants Michael S. Lewellen, Barry J. McDermott, P. Pohl, Sam Nuchia, Frank Frank Jackson, Mark V. Mancuso.

Richard H. Cobb, Houston, TX, for Defendant-Appellant W.H. Bearden.

Scott Anthony Durfee, Office of the Harris County District Attorney, Houston, TX, for Defendant-Appellant Bill Delmore.

Bobby Nick Turner, Office of the County Attorney for the County of Harris, Houston, TX, for Defendants-Appellants Judy Porter, Johnny Klavenhagen, Andrew White.

W. Michael Fisher, Roerig, Oliveira & Fisher, Brownsville, TX, for Defendants-Appellants Sarah Hunter, Floyd Duncan, John P. Chandler.

Appeals from the United States District Court for the Southern District of Texas.

Before JONES, SMITH and STEWART, Circuit Judges.

STEWART, Circuit Judge:

This is a case about mistaken identity, and it comes to us on appeal from a denial of qualified immunity in a § 1983 suit brought by plaintiffs Oscar F. Sanchez (Sanchez) and Liliana Sanchez against a number of public officials.[1] Sanchez alleged that he was illegally detained for twenty-six hours in violation of his due process rights. The defendants filed a motion for summary judgment, arguing that they were entitled to qualified immunity as a matter of law. The magistrate judge held that the defendants' motion should be granted. After conducting a de novo review of the record, the district court declined to follow the magistrate's recommendation, holding that

---

[1] The named defendants are as follows: Inspector Charles Swyden, Inspector Robert Poole, Officer Warren K. Hayward, Sergeant Michael S. Lewellen, Officer W.H. Bearden, Officer Barry J. McDermott, Sergeant P. Pohl, Police Chief Sam Nuchia, Lieutenant Frank Jackson, Captain Mark V. Mancuso, Sergeant Andrew White, Sergeant Judy Porter, Sheriff Johnny Klevenhagen, Assistant District Attorney Bill Delmore, Dispatcher Sarah Hunter, Investigator Floyd Duncan, and Sheriff John P. Chandler. Sanchez also sued unnamed persons employed by the United States of America, unnamed persons employed by the City of Houston, unnamed persons employed by Harris County, Texas, and unnamed persons employed by Cheatham County, Tennessee.

the defendants were not entitled to qualified immunity because Sanchez had shown that he was deprived of a clearly established constitutional right and that there was a disputed issue of material fact about whether the defendants acted in an objectively reasonable manner. The defendants now appeal. We reverse and remand this case to the district court for further proceedings consistent with this opinion.

BACKGROUND

On August 20, 1992, Sanchez arrived at Houston's Intercontinental Airport from Mexico at approximately 7:50 p.m. When Sanchez passed through the United States Customs Service, a Customs agent matched his name and general description to a fugitive warrant issued from Cheatham County, Tennessee. Because of the match, Sanchez was detained. Defendant John Chandler was the sheriff of Cheatham County; defendant Floyd Duncan was an investigator in the criminal investigation division of Cheatham County's Sheriff's Department; and Sarah Hunter was a dispatcher with the Cheatham County Sheriff's Department.

That same night, at approximately 8:33 p.m., the Cheatham County Sheriff's Department, through dispatcher Hunter, received a request from Customs at the International Airport in Houston for confirmation that a person named "Oscar F. Sanchez" was still wanted. The Cheatham County's Sheriff's Department, acting through either Hunter or investigator Duncan, responded at 8:46 p.m. that a person by the name of "Oscar F. Sanchez" was, in fact, still wanted.

At 8:59 p.m., Duncan received a message from Customs in Houston that proceedings had been initiated to take custody of "Sanchez." At 9:36 p.m., Duncan faxed to Customs in Houston identifying information, including photographs, fingerprint copies, and other information, including the fact that the wanted "Sanchez" had a tattoo of a rose on his left shoulder.

A unit from the Houston Police Department (HPD) was dispatched to Customs at approximately 10:29 p.m. Defendant Officer Warren K. Haywood arrived at the airport at approximately 11:24 p.m. Defendant Officer Michael S. Lewellen received a phone call and authorized a "fugitive hold" on Sanchez. Shortly after 12:15 a.m. on August 21, 1992, Officer Haywood transported Sanchez to HPD headquarters.

Later that day, defendant Officer W.H. Bearden along with defendant Sergeant P. Pohl brought Sanchez before a Harris County, Texas probable cause court at which time Sanchez refused to waive extradition proceedings. During the probable cause hearing, Sanchez claimed his innocence and argued that he was not the person named in the Cheatham County fugitive warrant. During that hearing, Officer Bearden noticed that Sanchez did not have the same tattoo on his shoulder that was described in the warrant from Tennessee. At the conclusion of the probable cause hearing, the judge ordered defendant Sheriff Johnny Klevenhagen to hold Sanchez until his (Sanchez's) identification could be confirmed. Officer Bearden then took Sanchez to the Harris County jail. Sanchez was searched and placed in a cell with other offenders.

Pursuant to the judge's request, defendant Officer Barry J. McDermott compared the fingerprints provided by Cheatham County against those of Sanchez. They did not match. Sanchez was released from custody at approximately 9:00 p.m. on August 21, 1992 – about twenty-six hours after his initial detention by Customs agents at the airport two hours and twenty-five minutes after he had been placed in the Harris County jail and before he was even booked at the jail. Assistant District Attorney Bill Delmore filed a motion to dismiss the fugitive complaint against Sanchez on September 1, 1992.[2]

Sanchez and his wife brought a § 1983 civil rights suit against a number of public officials, claiming that Sanchez had been deprived of a clearly established constitutional right and that the officials involved in his twenty-six hour "ordeal" acted unreasonably.[3] The defendants moved for summary judgment on the ground that they were entitled to qualified immunity, and a magistrate judge agreed. However, the district court declined to follow this recommendation and denied the defendants' motion. This appeal followed. We have jurisdiction[4] and now reverse.

---

[2] The motion operated as a procedural device to remove the fugitive complaint from the docket of the county criminal court.

[3] Mrs. Sanchez only asserted state-law causes of action.

[4] *See Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985); *Cantu v. Rocha*, 77 F.3d 795 (5th Cir.1996). We limit ourselves to the narrow question of whether, under § 1983, the district court erred in declining to extend qualified immunity to these defendants. As such, we express no opinion on the defendants' other claims.

DISCUSSION

We begin by addressing the immunities enjoyed by the various defendants named in this § 1983 lawsuit. In concluding that the defendants were not entitled to summary judgment, the district court threw all of the defendants into the qualified immunity basket, such that the district court made no distinction (for immunity purposes) between law enforcement officials and Assistant District Attorney (ADA) Delmore. All defendants, in the district court's eyes, were entitled to qualified immunity (of course, the district court did not believe that the facts of this case triggered immunity from Sanchez's suit). Accordingly, we must first decide whether ADA Delmore should enjoy the same immunity from § 1983 damages as the other defendants.

I. Does ADA Delmore Enjoy Qualified or Absolute Immunity

We begin with the well-settled principal that although § 1983 contains no immunities on its face, the Supreme Court has recognized the potentially disruptive effect of limitless civil liability, and as such, has held that certain public officials enjoy either absolute or qualified immunity from § 1983 suits, *See Hunter v. Bryant*, 502 U.S. 224, 228-29, 112 S.Ct. 534, 536-37, 116 L.Ed.2d 589 (1991); *Malley v. Briggs*, 476 U.S. 385, 389, 106 S.Ct. 1092, 1095, 89 L.Ed.2d 271 (1986); *Imbler v. Pachtman*, 424 U.S. 409, 417, 96 S.Ct. 984, 988-89, 47 L.Ed.2d 128 (1976). The test for determining whether a particular public official enjoys immunity from a § 1983 suit is not a rigid one. Rather, the

Court has said that "whether particular actions of government officials fit within a common law tradition of absolute immunity, or only the more general standard of qualified immunity, [courts] have applied a 'functional approach,' . . . which looks to 'the nature of the functions performed, not the identity of the actor who performed it.' " *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S.Ct. 2606, 2613, 125 L.Ed.2d 209 (1993) (quoting *Forrester v. White*, 484 U.S. 219, 229, 108 S.Ct. 538, 545, 98 L.Ed.2d 555 (1988)).

This functional framework has spawned certain general principles that operate to guide courts in their determination of whether prosecutors enjoy qualified immunity or absolute immunity. Prosecutors, for example, are entitled to absolute immunity from civil damages arising out of any acts geared towards the initiation of a prosecution or in preparation for judicial proceedings. *See Imbler v. Pachtman*, 424 U S. at 427, 96 S.Ct. at 993: *Brooks v. George County, Miss.*, 84 F.3d 157, 168 & n. 17 (5th Cir.), *cert. denied*, ___ U.S. ___, 117 S.Ct. 859, 166 L.Ed.2d 251 (1996); *Young v. Biggers*, 938 F.2d 505, 569 (5th Cir.1991). On the other hand, prosecutors enjoy qualified immunity only if the "prosecutor's administrative duties and . . . investigatory functions . . . do not relate to an advocate's preparation for the initiation of a prosecution or for judicial proceedings." *Buckley v. Fitzsimmons*, 509 U.S. at 272, 118 S.Ct. at 2615; *see Burns v. Reed*, 500 U.S. 478, 492-94, 111 S.Ct. 1934, 1942-44, 114 L.Ed.2d 547 (1991) (qualified immunity for giving legal advice to police); *Buckley*, 509 U.S. at 274-75, 113 S.Ct. at 2616-17 (qualified immunity for participating in investigatory functions prior to establishing probable cause or initiating suit); *id.* at 277-78, 113

S.Ct. at 2617-18 (qualified immunity for making out-of-court statements to the press). In general, qualified immunity " 'represents the norm' " for executive officers. *Malley v. Briggs*, 475 U.S. at 340, 106 S.Ct. at 1095 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 807, 102 S.Ct. 2727, 2732, 78 L.Ed.2d 396 (1982)).

In this case, our job is to determine whether the actions of ADA Delmore constitute preparation for judicial proceedings (which would entitle him to absolute immunity) or whether ADA Delmore was merely performing administrative duties (which would entitle him to qualified immunity). The record reveals that the only thing ADA Delmore did was file a motion that would remove the fugitive complaint against Sanchez from the docket of the county criminal court. We hold that this act was simply administrative in nature, thereby entitling ADA Delmore to qualified (and not absolute) immunity.

II. Are the Defendants Entitled to Qualified Immunity as a Matter of Law?

A. The Doctrine of Qualified Immunity

The test for § 1983 qualified immunity is by now familiar. We engage in a two-step inquiry. First, we must determine whether a public official's conduct deprived a § 1983 plaintiff of a "clearly established" constitutional or statutory right. *See Harlow v. Fitzgerald*, 457 U.S. at 818, 102 S.Ct. at 2738; *Salas v. Carpenter*, 980 F.2d 299, 304 (5th Cir.1992). The constitutional right must be sufficiently clear to put a reasonable officer on notice that certain conduct violates that right. *See Anderson v. Creighton*, 483 U.S. 635, 639, 107 S.Ct. 3034, 3038-39, 97 L.Ed.2d 523

(1987); *Feagley v. Waddill*, 868 F.2d 1437, 1439 (5th Cir.1989); *Melear v. Spears*, 862 F.2d 1177, 1187 (5th Cir.1989). The Supreme Court has warned against vague or general assertions of constitutional rights and has required a § 1983 plaintiff to state with specificity the constitutional right that has been allegedly violated – otherwise, liability could be imposed in every case. *See Anderson v. Creighton*, 483 U.S. at 639, 107 S.Ct. at 3038-39. The federal courts of appeal have taken an especially strict approach to determining whether a constitutional right is cognizable, thus resolving any doubts in the law against § 1983 plaintiffs.[5] We have followed this trend,

---

[5] *See Kernats v. O'Sullivan*, 35 F.3d 1171, 1178 (7th Cir.1994) ("[W]hen the factual setting is unique in non-trivial aspects, with no clear parallel in other cases, the relevant constitutional factors must point strongly in the direction of constitutional transgressions before immunity is lost."); *Giuffre v. Bissell*, 31 F.3d 1241, 1256 (3d Cir.1994) (finding that a decision that "broke new [constitutional] ground" and was in conflict with other circuit decisions meant that the constitutional right was not "clearly established"); *Spivey v. Elliott*, 29 F.3d 1522, 1527 (11th Cir.1994) ("Where there is so much room for differing interpretations, we cannot say the contours of the right were clearly established."); *Chew v. Gates*, 27 F.3d 1432, 1449-50 (9th Cir.1994) (finding that officers implementing a policy that had never been declared unconstitutional by any court are entitled to qualified immunity), *cert. denied*, 513 U.S. 1148, 115 S.Ct. 1097, 130 L.Ed.2d 1065 (1995); *Horta v. Sullivan*, 4 F.3d 2, 14 (1st Cir.1993) (holding that conflicting circuit decisions indicate that the constitutional right is not "clearly established"), *modified*, 36 F.3d 210 (1st Cir.1994). *See generally* Kit Kinports, *Qualified Immunity in Section 1983 Cases: The Unanswered Questions*, 23 GA.L.REV. 597, 605-07 n. 41 (1989) (discussing the questions left unanswered by the Court regarding the meaning of "clearly established constitutional right").

mindful that "a constitutional violation does not occur every time someone feels that they have been wronged or treated unfairly." *Shinn ex rel. Shinn v. College Station Indep. Sch. Dist.*, 96 F.3d 783, 786 (5th Cir.1996), *cert. denied*, ___ U.S. ___, 117 S.Ct. 1695, 137 L.Ed.2d 822 (1997).[6]

Second, a public official may successfully assert the defense of qualified immunity even though the official

---

[6] *See Babb v. Dorman*, 33 F.3d 472, 478 (5th Cir.1994) ("[W]e can confidently state that it is not clearly established that the offense of public intoxication requires, in all instances, a degree of intoxication greater than that for DWI."); *Foster v. City of Lake Jackson*, 28 F.3d 425, 431 (5th Cir.1994) (holding that the fact that the alleged right was expanded by the courts after incident does not mean the right was "clearly established" at the time of the conduct in question); *Salas v. Carpenter*, 980 F.2d at 309-10 (holding that the Fourteenth Amendment imposes no duty on a sheriff's department to train and equip police officers to handle hostage situations); *White v. Taylor*, 959 F.2d 539, 546 (5th Cir.1992) (holding that a decision issued by the Supreme Court after the defendant officer's trial, which held that the Court's standard regarding probable cause determinations had not provided guidance, was sufficient to show that the plaintiff had not been deprived of a clearly established constitutional right); *Hodorowski v. Ray*, 844 F.2d 1210, 1217 (5th Cir.1988) (reversing the district court's decision that "family integrity" is a clearly established constitutional right); *cf. Brewer v. Wilkinson*, 3 F.3d 816, 825-26 (5th Cir.1993) (stating that most recent decisions of the Supreme Court indicated that opening of prisoners' incoming mail is not a violation of the prisoner's constitutional rights, but opening outgoing mail is a violation), *cert. denied*, 510 U.S. 1123, 114 S.Ct. 1081, 127 L.Ed.2d 397 (1994); *James v. Sadler*, 909 F.2d 834, 838 (5th Cir.1990) ("The right to be free from an unreasonable pat-down search is a constitutional right sufficiently contoured to remove the defendant's actions from the protection of the immunity doctrine.").

violates a person's civil rights, provided the official's conduct was objectively reasonable. *Moville v. City of Live Oak*, 918 F.2d 548, 551 (5th Cir.1990); *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1183 (5th Cir.1990). Whether an official's conduct is objectively reasonable depends upon the circumstances confronting the official as well as "clearly established law" in effect at the time of the official's actions. *Anderson v. Creighton*, 483 U.S. at 641, 107 S.Ct. at 3039-40. The subjective intent of the public official is irrelevant, and the official's knowledge of the relevant law need not rise to the level of a "constitutional scholar." *Harlow v. Fitzgerald*, 457 U.S. at 815-17, 102 S.Ct. at 2736-38; *Babb v. Dorman*, 33 F.3d at 478.[7]

This two-part test sits atop a firm policy foundation. Foremost among these policy considerations is the deterrent effect that civil liability may have on the willingness of public officials to fully discharge their professional duties. *See Pierson v. Ray*, 386 U.S. 547, 555, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288 (1967); *Anderson v. Creighton*, 483 U.S. at 638, 107 S.Ct. at 3038; *Harlow v. Fitzgerald*, 457 U.S. at 814, 102 S.Ct. at 2736; *Scheuer v. Rhodes*, 416 U.S. 232,

---

[7] Prior to the Supreme Court's decision in *Harlow*, the Court's determination of whether a public official's actions were reasonable included a subjective component. *See Wood v. Strickland*, 420 U.S. 308, 321, 95 S.Ct. 992, 1000, 43 L.Ed.2d 214 (1975). In *Harlow*, however, the Court abandoned the subjective component of the qualified immunity analysis. 457 U.S. at 815-17, 102 S.Ct. at 2736-38; *see also* Stephen J. Shapiro, *Public Officials' Qualified Immunity in Section 1983 Actions Under* Harlow v. Fitzgerald *and its Progeny: A Critical Analysis*, 22 U.MICH.J.L.Rpr. 249, 273-74 (1989); John D. Kirby, Note, *Qualified Immunity for Civil Rights Violations: Refining the Standard*, 75 CORNELL L.REV. 462, 484-85 (1990).

239-41, 94 S.Ct. 1683, 1687-89, 40 L.Ed.2d 90 (1974). For example, the Supreme Court has expressed concern that expansive civil liability for actions taken while on duty may cause police officers to hesitate before acting – a situation that could produce unwelcome results. *See Malley v. Briggs*, 475 U.S. at 341, 106 S.Ct. at 1096; *Briscoe v. LaHue*, 460 U.S. 325, 343, 103 S.Ct. 1108, 1119-20, 75 L.Ed.2d 96 (1983). Balanced against these concerns is the right of injured persons to receive redress for a violation of their constitutional rights, with the threat of monetary damages operating to deter public officials from violating citizens' constitutional rights. *See Butz v. Economou*, 438 U.S. 478, 504-07, 98 S.Ct. 2894, 2909-11, 57 L.Ed.2d 895 (1978).

B. Analysis

With these background principles in mind, we now turn to the merits of this appeal. Sanchez alleges that he was wrongfully detained and falsely imprisoned by the defendants when they knew that he was not the person wanted on the fugitive warrant. Notably, Sanchez does not attack the validity of the warrant, which he concedes had been issued for "Oscar F. Sanchez" with his date of birth and social security number. Sanchez argues instead that because the defendants were in possession of the actual suspect's photographs, fingerprints, and information that the suspect had a rose tattoo on his left shoulder within two hours after Sanchez's initial detention, the defendants had "conclusive proof" that he was not the person wanted on the outstanding arrest warrant. From this, Sanchez concludes that his constitutional rights were violated because no one compared his fingerprints to

those of the suspect until almost twenty-four hours after his initial detention.

We disagree, go no further than step one of the qualified immunity analysis, and conclude that Sanchez has not shown that the defendants deprived him of a clearly established constitutional right.

In *Baker v. McCollan*, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979), the Supreme Court held that the detention of an individual for three days on the basis of a facially valid search warrant did not amount to a deprivation of liberty without due process of law – despite the individual's protestations of innocence. *Id.* at 143-45, 99 S.Ct. at 2694-95; *see also Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir.1980).[8] The Court reasoned that officials charged with maintaining custody of the accused named in a warrant are not required by the Constitution to perform

---

[8] Of course, the Court qualified this statement and suggested that at some point, even though law enforcement officials are proceeding pursuant to a valid warrant in the face of protestations of innocence, detention of that individual would run afoul of the Constitution. 443 U.S. at 144-45, 99 S.Ct. at 2694-95. However, the Court held that three days "does not and could not amount to such a deprivation." *Id.* at 145, 99 S.Ct. at 2695; *Simons v. Clemons*, 752 F.2d 1053, 1054-55 (5th Cir.1985) (plaintiff who alleged that she had been illegally arrested and detained for 14 to 16 hours failed to allege any constitutional deprivation because she had been arrested on a facially valid warrant); *compare Douthit*, 619 F.2d at 532 (detention of prisoner for 30 days beyond the expiration of his sentence in the absence of a facially valid court order or warrant constitutes a deprivation of due process). Accordingly, to the extent Sanchez bases his constitutional claim on the amount of time he was detained (approximately twenty-six hours), we reject the argument under the authority of *Baker*.

an error-free investigation of a claim of innocence. *Id.* at 145-46, 99 S.Ct. at 2694-96. "The Constitution does not guarantee that only the guilty will be arrested," for "[i]f it did," reasoned the Court, "§ 1983 would provide a cause of action for every defendant acquitted – indeed, for every suspect released." *Id.* at 145, 99 S.Ct. at 2695.[9] The Court concluded that the three-day detention did not amount to a violation of the plaintiff's constitutional right to due process. *Id.*

We find that the facts of this case come within the compass of *Baker;* in fact, we fail to see any meaningful distinction between *Baker* and this case. Federal law enforcement officials and officials from Houston and Cheatham County, Tennessee held Sanchez on the basis of a valid arrest warrant. Those same officials also declined to release Sanchez even though he consistently asserted his innocence. Under these facts, *Baker* compels the conclusion that the actions of the defendants in this case did not deprive Sanchez of any clearly established constitutional right.

That law enforcement officials were in possession of information that exculpated Sanchez does not change this result. Although we have held that illegal detention by way of false imprisonment is a recognized § 1983 tort, *Simmons v. McElveen,* 846 F.2d 337 (5th Cir.1988), we have required proof that the official's actions went beyond mere negligence before that tort takes on constitutional

---

[9] This conclusion makes perfect sense in light of the important policy underlying qualified immunity, namely, that public officials should not be deterred from discharging their professional obligations out of fear of civil liability.

dimensions. *Sanders v. English,* 950 F.2d 1152, 1159 (5th Cir.1992) (cases cited therein). Sanchez has failed to show that failure to act on the exculpatory information went beyond mere negligence. We need not look any further than Sanchez's own testimony for support for this conclusion. In his deposition, Sanchez said that there was "considerable debate amongst the officers involved as to whether he [Sanchez] matched the appearance of the suspect wanted in the warrant." Given this fact, we simply cannot say that the defendants' failure to release Sanchez sooner was anything more than negligent. *See, e.g., Simmons v. McElveen,* 846 F.2d at 339 (failure to compare suspect's fingerprints with those on a cigarette package amounted to no more than mere negligence).)[10] A contrary conclusion would produce the anomalous result that the defendants were required to conduct a virtually error-free investigation. In light of clear language to the contrary in *Baker,* we decline to so hold.

---

[10] Both Sanchez and the district court point to the testimony of one defendant which illustrates the view that Sanchez should have been released sooner. It is ironic that Sanchez chose to name so many defendants and now relies on the testimony of a single defendant for his claim that the defendants deprived him of his constitutional right to due process. In any event, the mere fact that one of the actors in the events surrounding Sanchez's detention believed that Sanchez was not the person named in the warrant does not alter our conclusion that there was an ongoing debate among the officers as to whether Sanchez was the Tennessee fugitive.

CONCLUSION

Finding that Sanchez has not shown that he has been deprived of a clearly established constitutional right, we hold that all defendants named in Sanchez's § 1983 suit are entitled to qualified immunity as a matter of law. Accordingly, we REVERSE the district court's conclusion to the contrary and REMAND this case to that court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

OSCAR F. SANCHEZ, ET AL	§	
VS.	§	CIVIL ACTION NO. B-94-242
INSPECTOR CHARLES SWYDEN, ET AL	§	

ORDER

(Filed May 09, 1996)

Before the Court is the Magistrate Judge's Report and Recommendation in the above referenced cause of action. After a de novo review of the entire file, it is the opinion of this Court that the Magistrate Judge's Report and Recommendation should not be adopted.

The Report and Recommendation (R&R) filed by Magistrate Judge Garza recommends that Defendants' Motions for Summary Judgment be granted. However, the R&R misstates several conclusions of law which are critical to Plaintiff's case. Consequently for the reasons forthcoming, Summary Judgment does not appear to be warranted.

FACTS

On August 20th, 1992, Plaintiff Oscar F. Sanchez, was apprehended as he was passing through the United States Customs Service at Houston's Intercontinental Airport. Plaintiff had just arrived from Mexico City after which

Customs agents matched his name and general description to a fugitive warrant from Cheatham County, Tennessee.[1]

At approximately 8:59 p.m. on the night in question, the Cheatham County Sheriff's Department, received information from Houston, Texas, that proceedings had been initiated to take custody of Oscar F. Sanchez. Thereafter, at approximately 9:36 p.m., Floyd Duncan of the Cheatham County Sheriff's Department, faxed identifying information, including photographs, fingerprint copies, and other information of the individual wanted, including information that the wanted person had a tattoo of a rose on his left shoulder.

The Houston Police Department (HPD) then dispatched a unit to the Customs Service at 10:29 p.m. At approximately 11:24 p.m. Officer Warren K. Haywood arrived at Intercontinental Airport. Officer Haywood then transported Plaintiff to HPD Central Headquarters shortly after 12:15 am. Later that day, HPD Officers W.H. Bearden, and B.A. Pohl, took Plaintiff before a Harris County court for a probable cause hearing. During the hearing Plaintiff professed to be a person other than the one named in the warrant. In addition, Officer Bearden noticed the Plaintiff's lack of a tattoo described in the Warrant from Tennessee.[2]

---

[1] The Court notes that Plaintiff in his deposition testified as to considerable debate amongst the officers involved as to whether he matched the appearance of the suspect wanted in the warrant. *See Generally Deposition of Oscar F. Sanchez*, P.27-29, and 101-102.

[2] The Court takes notice of the fact that Cheatham County Investigator, Floyd Duncan testified in his deposition that the

At the conclusion of the hearing, the judge ordered Harris County Sheriff Johnny Klevenhagen to hold Plaintiff until his identification could be confirmed. Plaintiff was then taken to the Harris county Sheriff's Department to be booked into the County Jail. Officer Bearden then caused a fingerprint comparison to be made. HPD Officer Barry J. McDermott, later determined that the fingerprints of the suspect were not of the same classification as the wanted subject. When Plaintiff's fingerprints failed to match those of the fugitive, Officer Bearden took the information to the Harris county Jail on the evening of August 21, 1992. Plaintiff was thereafter released from custody at about 9:00 p.m. that evening.

HOLDING

"Rule 56(c) mandates . . . summary judgment, . . . against a party who fails to make a showing sufficient to establish the existence of ***an element*** essential to that Party's case . . . ". *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 2552 (emphasis added).[3] In the present case, Plaintiffs have made sufficient showings to survive summary judgment.

---

individual wanted out [sic] Tennessee had a tattoo of a rose on his left shoulder. Plaintiff in this case had a tattoo of a parrot on his right shoulder. *See Deposition of Floyd Duncan* P.35 L.4-6, 16-25.

[3] In conclusion of law #3 the Report & Recommendation inaccurately states Plaintiff's burden by stating "To defeat summary judgment, Plaintiffs . . . must 'make a showing sufficient to establish the existence of each element essential to [their] case". The distinction is minor. However, the Court feels that *Celotex* should be quoted correctly.

Plaintiffs have alleged constitutional Deprivation as part of their cause of action. In the twelfth conclusion of law, the R&R states "Plaintiff . . . did not suffer a constitutional deprivation simply because he was detained for 26 hours. Where an individual has been arrested pursuant to a valid arrest warrant, even a three-day detention does not deprive him of any constitutional rights". *Baker v. McCollan*, 443 U.S. 137 (1979). However, *Baker* is distinguishable from the present case in that the cause of action sounded in negligence. In *Baker*, Mr. Justice Rehnquist writing for a four member majority acknowledge that "[i]n the instant case, the Court of Appeals for the Fifth Circuit saw the focal issue as whether petitioner Baker, the Sheriff of Potter County, Texas, had negligently failed to establish certain identification procedures which would have revealed that respondent was not the man wanted in connection with the drug charges on which he was arrested". Id. Furthermore, Mr. Justice Blackmun in his concurring opinion stated that

> here there is no indication that petitioner was aware, or should have been aware, either of the likelihood of misidentification or of his subordinates' action in this case. I do not understand the Court's opinion . . . foreclose the possibility that a prisoner in respondent's predicament might prove a due process violation by a sheriff who deliberately and repeatedly refused to check the identity of a complaining prisoner against readily available mug shots and fingerprints. Such conduct would be far more "shocking" than anything this petitioner had done. The Court notes that intent is relevant to the existence of a constitutional violation. . . .

Id. at 2696-2697. In the present case, Plaintiffs are not alleging that Defendants negligently failed to check the identifying information. On the contrary, Plaintiffs are alleging that Defendants held and detained him despite the fact they knew he was not the man described in the warrant.

In the sixth conclusion of law the R&R states "Plaintiffs may not rely on 42 U.S.C. §1983 to sue the Federal Defendants since no cause of action under §1983 is cognizable against the United States or federal Officers". *Davis v. United States,* 439 F.2d 1118, 1119 (8th Cir. 1971). The Fifth Circuit recognized in *Knights of the Ku Klux Klan v. United States Department of Health and Human Services,* however, that Congress intended that the federal government and its agents would be liable under §1983 when participating in schemes under which state actors would have been liable. 735 F.2d 895, 900 (5th Cir. 1984). This is the so called conspiracy exception to §1983. Further on point is *Hampton v. Hanrahn,* in which the Court stated that "when federal officials are engaged in a conspiracy with state officials to deprive constitutional rights, the state officials provide the requisite state action to make the entire conspiracy actionable under section 1983." 600 F.2d 600, 623 (7th Cir. 1979). Thus, because the Plaintiffs' have alleged a conspiracy between federal and local police departments, suite under §1983 is proper.

Finally, in the ninth and fourteenth conclusions of law the R&R asserts that qualified immunity would shield all defendants from liability. Qualified immunity however, is not absolute immunity. Consequently, the Supreme Court has held "that government officials performing discretionary functions generally are shielded

from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known". *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982). Defendants have not met this two prong test. As the Plaintiffs note in their objections, "[d]efendants . . . cannot argue . . . that continuing to detain an individual whom they know is not the party on the warrant for which he was originally detained and with no other pending allegations against him . . . [would not] violate clearly established statutory or constitutional rights of which a reasonable person would have known". *See Plaintiffs' Objections to Magistrate Judge's Report And Recommendation.* In fact, Cheatham County Investigator, Floyd Duncan, testified in his deposition that because of discrepancies in the identifying information and the appearance of the Plaintiff, he felt as if they did not have his man. *See Deposition. Floyd Duncan* P.36, L.1-7.

Thus, in light of the information before the Court at this time, Summary Judgment is not warranted. It is clear from Plaintiffs' petition that they have alleged a deprivation of their constitutional rights. Furthermore, this Court believes that Plaintiffs have not failed to make a showing sufficient to establish the existence of an element essential to their claim. It is therefore, ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment shall be DENIED.

Done in Brownsville, Texas, this 9th day of May, 1996.

/s/ Filemon B. Vela
Filemon B. Vela
United States
District Judge

TRUE COPY I
CERTIFY ATTEST:
MICHAEL N. MILBY,
Clerk
By /s/ Ed Leandro
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40557
Summary Calendar

OSCAR F. SANCHEZ; LILIAN A. SANCHEZ,

Plaintiffs-Appellees,

versus

CHARLES SWYDEN, Inspector, ET Al.,

Defendants,

WARREN K. HAYWARD, Officer, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas

(Filed Apr. 15, 1998)

OPINION ON PETITION FOR REHEARING
(Opinion, January 13, 1998,
5th Cir., 1998, ___F.3d___)

Before JONES, SMITH and STEWART, Circuit Judges.

CARL E. STEWART, Circuit Judge:

The petition for rehearing is granted. The opinion reported at 131 F.3d 1144 (5th Cir. 1998) is withdrawn, and the opinion below is substituted in all respects for the withdrawn opinion.

This is a case about mistaken identity, and it comes to us on appeal from a denial of qualified immunity in a § 1983 suit brought by plaintiffs Oscar F. Sanchez (Sanchez) and Liliana Sanchez against a number of public officials.[1] Sanchez alleged that he was illegally detained for twenty-six hours in violation of his due process rights. The defendants filed a motion for summary judgment, arguing that they were entitled to qualified immunity as a matter of law. The magistrate judge held that the defendants' motion should be granted. After conducting a de novo review of the record, the district court declined to follow the magistrate's recommendation, holding that the defendants were not entitled to qualified immunity because Sanchez had shown that he was deprived of a clearly established constitutional right and that there was a disputed issue of material fact about whether the defendants acted in an objectively reasonable manner. The defendants now appeal. We reverse and remand this case to the district court for further proceedings consistent with this opinion.

---

[1] The named defendants are as follows: Inspector Charles Swyden, Inspector Robert Poole, Officer Warren K. Hayward, Sergeant Michael S. Lewellen, Officer W.H. Bearden, Officer Barry J. McDermott, Sergeant P. Pohl, Police Chief Sam Nuchia, Lieutenant Frank Jackson, Captain Mark V. Mancuso, Sergeant Andrew White, Sergeant Judy Porter, Sheriff Johnny Klevenhagen, Assistant District Attorney Bill Delmore, Dispatcher Sarah Hunter, Investigator Floyd Duncan, and Sheriff John P. Chandler. Sanchez also sued unnamed persons employed by the United States of America, unnamed persons employed by the City of Houston, unnamed persons employed by Harris County, Texas, and unnamed persons employed by Cheatham County, Tennessee.

BACKGROUND

On August 20, 1992, Sanchez arrived at Houston's Intercontinental Airport from Mexico at approximately 7:50 p.m. When Sanchez passed through the United States Customs Service, a Customs agent matched his name and general description to a fugitive warrant issued from Cheatham County, Tennessee. Because of the match, Sanchez was detained. Defendant John Chandler was the sheriff of Cheatham County; defendant Floyd Duncan was an investigator in the criminal investigation division of Cheatham County's Sheriff's Department; and Sarah Hunter was a dispatcher with the Cheatham County Sheriff's Department.

That same night, at approximately 8:33 p.m., the Cheatham County Sheriff's Department, through dispatcher Hunter, received a request from Customs at the Intercontinental Airport in Houston for confirmation that a person named "Oscar F. Sanchez" was still wanted. The Cheatham County's Sheriff's Department, acting through either Hunter or investigator Duncan, responded at 8:46 p.m. that a person by the name of "Oscar F. Sanchez" was, in fact, still wanted.

At 8:59 p.m., Duncan received a message from Customs in Houston that proceedings had been initiated to take custody of "Sanchez." At 9:36 p.m., Duncan faxed to Customs in Houston identifying information, including photographs, fingerprint copies, and other information, including the fact that the [sic] wanted "Sanchez" had a tattoo of a rose on his left shoulder.

A unit from the Houston Police Department (HPD) was dispatched to Customs at approximately 10:29 p.m.

Defendant Officer Warren K. Haywood arrived at the airport at approximately 11:24 p.m. Defendant Officer Michael S. Lewellen received a phone call and authorized a "fugitive hold" on Sanchez. Shortly after 12:15 a.m. on August 21, 1992, Officer Haywood transported Sanchez to HPD headquarters.

Later that day, defendant Officer W.H. Bearden along with defendant Sergeant P. Pohl brought Sanchez before a Harris County, Texas probable cause court at which time Sanchez refused to waive extradition proceedings. During the probable cause hearing, Sanchez claimed his innocence and argued that he was not the person named in the Cheatham County fugitive warrant. During that hearing, Officer Bearden noticed that Sanchez did not have the same tattoo on his shoulder that was described in the warrant from Tennessee. At the conclusion of the probable cause hearing, the judge ordered defendant Sheriff Johnny Klevenhagen to hold Sanchez until his (Sanchez's) identification could be confirmed. Officer Bearden then took Sanchez to the Harris County jail. Sanchez was searched and placed in a cell with other offenders.

Pursuant to the judge's request, defendant Officer Barry J. McDermott compared the fingerprints provided by Cheatham County against those of Sanchez. They did not match. Sanchez was released from custody at approximately 9:00 p.m. on August 21, 1992 – about twenty-six hours after his initial detention by Customs agents at the airport, two hours and twenty-five minutes after he had been placed in the Harris County jail, and before he was even booked at the jail. Assistant District Attorney Bill

Delmore filed a motion to dismiss the fugitive complaint against Sanchez on September 1, 1992.[2]

Sanchez and his wife brought a § 1983 civil rights suit against a number of public officials, claiming that Sanchez had been deprived of a clearly established constitutional right and that the officials involved in his twenty-six hour "ordeal" acted unreasonably.[3] The defendants moved for summary judgment on the ground that they were entitled to qualified immunity, and a magistrate judge agreed. However, the district court declined to follow this recommendation and denied the defendants' motion. This appeal followed. We have jurisdiction[4] and now reverse.

DISCUSSION

We begin by noting that ADA Delmore challenges the district court's rejection of the magistrate's recommendation that Delmore be accorded absolute and qualified immunity from suit. Under the test for qualified immunity, Sanchez has failed to prove that he was deprived of a clearly established constitutional right. Because we find that no conduct by the defendants' deprived the plaintiff of a clearly established constitutional right, we

---

[2] The motion operated as a procedural device to remove the fugitive complaint from the docket of the county criminal court.

[3] Mrs. Sanchez only asserted state-law causes of action.

[4] *See Mitchell v. Forsyth*, 472 U.S. 511 (1985); *Cantu v. Rocha*, 77 F.3d 795 (5th Cir. 1996). We limit ourselves to the narrow question of whether, under § 1983, the district court erred in declining to extend qualified immunity to these defendants. As such, we express no opinion on the defendants' other claims.

need not reach the issue of absolute immunity. Instead, we conclude that it is only necessary to address the qualified immunity claims of the defendants.

I. Are the Defendants Entitled to Qualified Immunity as a Matter of Law?

A. The Doctrine of Qualified Immunity

The well-established test for qualified immunity requires us to engage in a two-step inquiry. First, we must determine whether a public official's conduct deprived a § 1983 plaintiff of a "clearly established" constitutional or statutory right. *See Harlow v. Fitzgerald*, 457 U.S. at 818; *Salas v. Carpenter*, 980 F.2d 299, 304 (5th Cir. 1992). The constitutional right must be sufficiently clear to put a reasonable officer on notice that certain conduct violates that right. *See Anderson v. Creighton*, 483 U.S. 635, 639 (1987); *Feagley v. Waddill*, 868 F.2d 1437, 1439 (5th Cir. 1989); *Melear v. Spears*, 862 F.2d 1177, 1187 (5th Cir. 1989). The Supreme Court has warned against vague or general assertions of constitutional rights and has required a § 1983 plaintiff to state with specificity the constitutional right that has been allegedly violated – otherwise, liability could be imposed in every case. *See Anderson v. Creighton*, 483 U.S. at 639. The federal courts of appeal have taken an especially strict approach to determining whether a constitutional right is cognizable, thus resolving any doubts in the law against § 1983 plaintiffs.[5] We have followed this trend, mindful that "a

---

[5] *See Kernats v. O'Sullivan*, 35 F.3d 1171, 1178 (7th Cir. 1994) ("[W]hen the factual setting is unique in non-trivial aspects,

constitutional violation does not occur every time someone feels that they have been wronged or treated unfairly." *Shinn ex rel. Shinn v. College Station Indep. Sch. Dist.*, 96 F.3d 783, 786 (5th Cir. 1996), *cert. denied*, 117 S.Ct. 1695, 137 L.Ed.2d 822 (1997).[6]

---

with no clear parallel in other cases, the relevant constitutional factors must point strongly in the direction of constitutional transgressions before immunity is lost."); *Spivey v. Elliott*, 29 F.3d 1522, 1527 (11th Cir. 1994) ("Where there is so much room for differing interpretations, we cannot say the contours of the right were clearly established."); *Chew v. Gates*, 27 F.3d 1432, 1449-50 (9th Cir. 1994) (finding that officers implementing a policy that had never been declared unconstitutional by any court are entitled to qualified immunity), *cert. denied*, 115 S.Ct. 1097 (1995). *See generally* Kit Kinports, *Qualified Immunity in Section 1983 Cases: The Unanswered Questions*, 23 GA.L.REV. 597, 605-07 n. 41 (1989) (discussing the questions left unanswered by the Court regarding the meaning of "clearly established constitutional right").

[6] *See Babb v. Dorman*, 33 F.3d 472, 478 (5th Cir. 1994) ("[W]e can confidently state that it is not clearly established that the offense of public intoxication requires, in all instances, a degree of intoxication greater than that for DWI."); *Foster v. City of Lake Jackson*, 28 F.3d 425, 431 (5th Cir. 1994) (holding that the fact that the alleged right was expanded by the courts after incident does not mean the right was "clearly established" at the time of the conduct in question); *Salas v. Carpenter*, 980 F.2d at 309-10 (holding that the Fourteenth Amendment imposes no duty on a sheriff's department to train and equip police officers to handle hostage situations); *White v. Taylor*, 959 F.2d 539, 546 (5th Cir. 1992) (holding that a decision issued by the Supreme Court after the defendant officer's trial, which held that the Court's standard regarding probable cause determinations had not provided guidance, was sufficient to show that the plaintiff had not been deprived of a clearly established constitutional right); *Hodorowski v. Ray*, 844 F.2d 1210, 1217 (5th Cir. 1988) (reversing the district court's decision that "family integrity" is a clearly

Second, a public official may successfully assert the defense of qualified immunity even though the official violates a person's civil rights, provided the official's conduct was objectively reasonable. *Mouille v. City of Live Oak*, 918 F.2d 548, 551 (5th Cir. 1990); *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1183 (5th Cir. 1990). Whether an official's conduct is objectively reasonable depends upon the circumstances confronting the official as well as "clearly established law" in effect at the time of the official's actions. *Anderson v. Creighton*, 483 U.S. at 641. The subjective intent of the public official is irrelevant, and the official's knowledge of the relevant law need not rise to the level of a "constitutional scholar." *Harlow v. Fitzgerald*, 457 U.S. at 815-17; *Babb v. Dorman*, 33 F.3d at 478.[7]

---

established constitutional right); *cf. Brewer v. Wilkinson*, 3 F.3d 816, 825-26 (5th Cir. 1993) (stating that most recent decisions of the Supreme Court indicated that opening of prisoners' incoming mail is not a violation of the prisoner's constitutional rights, but opening outgoing mail is a violation), *cert. denied*, 114 S.Ct. 1081 (1994); *James v. Sadler*, 909 F.2d 834, 838 (5th Cir. 1990) ("The right to be free from an unreasonable pat-down search is a constitutional right sufficiently contoured to remove the defendant's actions from the protection of the immunity doctrine.").

[7] Prior to the Supreme Court's decision in *Harlow*, the Court's determination of whether a public official's actions were reasonable included a subjective component. *See Wood v. Strickland*, 420 U.S. 308, 321 (1975). In *Harlow*, however, the Court abandoned the subjective component of the qualified immunity analysis. 457 U.S. at 815-17; *see also* Stephen J. Shapiro, *Public Officials' Qualified Immunity in Section 1983 Actions Under* Harlow v. Fitzgerald *and its Progeny: A Critical Analysis*, 22 U.MICH.J.L.REF. 249, 273-74 (1989); John D. Kirby, Note, *Qualified Immunity for Civil Rights Violations: Refining the Standard*, 75 CORNELL L.REV. 462, 484-85 (1990).

This two-part test sits atop a firm policy foundation. Foremost among these policy considerations is the deterrent effect that civil liability may have on the willingness of public officials to fully discharge their professional duties. *See Pierson v. Ray*, 386 U.S. 547, 555 (1967); *Anderson v. Creighton*, 483 U.S. at 638; *Harlow v. Fitzgerald*, 457 U.S. at 814; *Scheuer v. Rhodes*, 416 U.S. 232, 239-41 (1974). For example, the Supreme Court has expressed concern that expansive civil liability for actions taken while on duty may cause police officers to hesitate before acting – a situation that could produce unwelcome results. *See Malley v. Briggs*, 475 U.S. at 341; *Briscoe v. LaHue*, 460 U.S. 325, 343 (1983). Balanced against these concerns is the right of injured persons to receive redress for a violation of their constitutional rights, with the threat of monetary damages operating to deter public officials from violating citizens' constitutional rights. *See Butz v. Economou*, 438 U.S. 478, 504-07 (1978).

B. Analysis

With these background principles in mind, we now turn to the merits of this appeal. Sanchez alleges that he was wrongfully detained and falsely imprisoned by the defendants when they knew that he was not the person wanted on the fugitive warrant. Notably, Sanchez does not attack the validity of the warrant, which he concedes had been issued for "Oscar F. Sanchez" with his date of birth and social security number. Sanchez argues instead that because the defendants were in possession of the actual suspect's photographs, fingerprints, and information that the suspect had a rose tattoo on his left shoulder

within two hours after Sanchez's initial detention, the defendants had "conclusive proof" that he was not the person wanted on the outstanding arrest warrant. From this, Sanchez concludes that his constitutional rights were violated because no one compared his fingerprints to those of the suspect until almost twenty-four hours after his initial detention.

We disagree, go no further than step one of the qualified immunity analysis, and conclude that Sanchez has not shown that the defendants deprived him of a clearly established constitutional right.

In *Baker v. McCollan*, 443 U.S. 137 (1979), the Supreme Court held that the detention of an individual for three days on the basis of a facially valid search warrant did not amount to a deprivation of liberty without due process of law – despite the individual's protestations of innocence. *Id.* at 143-45; *see also Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980).[8] The Court reasoned that officials

---

[8] Of course, the Court qualified this statement and suggested that at some point, even though law enforcement officials are proceeding pursuant to a valid warrant in the face of protestations of innocence, detention of that individual would run afoul of the Constitution. 443 U.S. at 144-45. However, the Court held that three days "does not and could not amount to such a deprivation." *Id.* at 145; *Simons v. Clemons*, 752 F.2d 1053, 1054-55 (5th Cir. 1985) (plaintiff who alleged that she had been illegally arrested and detained for 14 to 16 hours failed to allege any constitutional deprivation because she had been arrested on a facially valid warrant); *compare Douthit*, 619 F.2d at 532 (detention of prisoner for 30 days beyond the expiration of his sentence in the absence of a facially valid court order or warrant constitutes a deprivation of due process). Accordingly, to the extent Sanchez bases his constitutional claim

charged with maintaining custody of the accused named in a warrant are not required by the Constitution to perform an error-free investigation of a claim of innocence. *Id.* at 145-46. "The Constitution does not guarantee that only the guilty will be arrested," for "[i]f it did," reasoned the Court, "§ 1983 would provide a cause of action for every defendant acquitted – indeed, for every suspect released." *Id.* at 145.[9] The Court concluded that the three-day detention did not amount to a violation of the plaintiff's constitutional right to due process. *Id.*

We find that the facts of this case come within the compass of *Baker;* in fact, we fail to see any meaningful distinction between *Baker* and this case. Federal law enforcement officials and officials from Houston and Cheatham County, Tennessee held Sanchez on the basis of a valid arrest warrant. Those same officials also declined to release Sanchez even though he consistently asserted his innocence. Under these facts, *Baker* compels the conclusion that the actions of the defendants in this case did not deprive Sanchez of any clearly established constitutional right.

That law enforcement officials were in possession of information that exculpated Sanchez does not change this result. Although we have held that illegal detention by way of false imprisonment is a recognized § 1983 tort,

---

on the amount of time he was detained (approximately twenty-six hours), we reject the argument under the authority of *Baker.*

[9] This conclusion makes perfect sense in light of the important policy underlying qualified immunity, namely, that public officials should not be deterred from discharging their professional obligations out of fear of civil liability.

Simmons v. McElveen, 846 F.2d 337 (5th Cir. 1988), we have required proof that the official's actions went beyond mere negligence before that tort takes on constitutional dimensions. *Sanders v. English*, 950 F.2d 1152, 1159 (5th Cir. 1992) (cases cited therein). Sanchez has failed to show that failure to act on the exculpatory information went beyond mere negligence. We need not look any further than Sanchez's own testimony for support for this conclusion. In his deposition, Sanchez said that there was "considerable debate amongst the officers involved as to whether he [Sanchez] matched the appearance of the suspect wanted in the warrant." Given this fact, we simply cannot say that the defendants' failure to release Sanchez sooner was anything more than negligent. *See, e.g., Simmons v. McElveen*, 846 F.2d at 339 (failure to compare suspect's fingerprints with those on a cigarette package amounted to no more than mere negligence).[10] A contrary conclusion would produce the anomalous result that the defendants were required to conduct a virtually error-free investigation. In light of clear language to the contrary in *Baker*, we decline to so hold.

---

[10] Both Sanchez and the district court point to the testimony of one defendant which illustrates the view that Sanchez should have been released sooner. It is ironic that Sanchez chose to name so many defendants and now relies on the testimony of a single defendant for his claim that the defendants deprived him of his constitutional right to due process. In any event, the mere fact that one of the actors in the events surrounding Sanchez's detention believed that Sanchez was not the person named in the warrant does not alter our conclusion that there was an ongoing debate among the officers as to whether Sanchez was the Tennessee fugitive.

CONCLUSION

Finding that Sanchez has not shown that he has been deprived of a clearly established constitutional right, we hold that all defendants named in Sanchez's § 1983 suit are entitled to qualified immunity as a matter of law. Accordingly, we REVERSE the district court's conclusion to the contrary and REMAND this case to that court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.